

From: Jeff Bonner
To: Microsoft ATR
Date: 1/24/02 1:59am
Subject: Microsoft Settlement Objection

I object to the Proposed Final Judgment in United States v Microsoft Corp, Civil Action No. 98-1232 (CKK) also now referred to as "Track I", and would like to express those objections herein. Under the Antitrust Procedures and Penalties Act (15 U.S.C. ? 16(d), the "Tunney Act"), the court is required to consider public commentary before accepting any settlement.

I should preface my comments by saying that I am a long-time user of Microsoft Windows, Internet Explorer, and Microsoft Office; in fact, I'm using them to research the subject and write this message.

Everyone can agree that Microsoft is a very successful corporation, and I am not against businesses being profitable. I draw the line at a company demonstrating themselves to be arrogant and beyond reproach, even bordering on flippant, when faced with the scrutiny of the United States Department of Justice. Microsoft is this company. They have shown time and again, regardless of any finding or judgment, that they will continue to do as they please.

Although you are probably familiar with the following points, they illustrate how Microsoft has shown no intention of acting lawfully:

* Microsoft and the Justice Department signed a consent decree in 1994 limiting Microsoft's actions until the year 2000. Even though later upheld by U.S. District Judge Thomas Penfield Jackson in 1995, Microsoft essentially ignored it. Result: The competing Netscape browser is all but gone today, left with a dwindling market share. Consider this alongside a later discovery that various Microsoft software code had the phrase "Netscape engineers are weenies!" hidden inside.

* Regarding Case No. 2:96-CV-645 B; Dist. of Utah - Central Div., Caldera Inc. v Microsoft Corp., the court ruled in 1996 that "Caldera has presented sufficient evidence that the incompatibilities alleged were part of an anticompetitive scheme by Microsoft." The resulting settlement was confidential.

* DoJ wanted to fine Microsoft \$1 million a day in 1997 for bundling Internet Explorer with Windows 95, in violation of the consent decree. A preliminary injunction was issued against Microsoft, who appealed and then offered computer makers old or "broken" version of Windows 95 without Internet Explorer. DoJ asked that Microsoft be held

in contempt for failing to obey the order.

Which brings us to 2002. Ostensibly, the purpose of this action is to punish Microsoft for breaking the law, and keep them from violating it again. But simply making them sign something, promising they will no longer operate illegally, in no way prevents them from actually doing it, as evidenced above. As stated in *United States v E. I. Dupont de Nemours & Co*, 366 U.S. 316, 232 (1966), the Court of Appeals said, "The suit has been a futile exercise if the Government proves a violation but fails to secure a remedy adequate to address it."

Worse yet, the Proposed Final Judgment (PFJ) is flawed in several ways. The two items that concern me most are:

1. The "Findings of Fact ? 28" define "middleware" to mean application software that itself presents a set of APIs which allow users to write new applications, without reference to the underlying operating system. Yet Definition J defines it in a much more restrictive way, allowing Microsoft to exclude any software from being covered by the definition, merely by changing product version numbers. For example, if the next version of Internet Explorer were named "7.0.0" instead of "7" or "7.0", it would not be deemed Microsoft Middleware by the PFJ.

2. ? III. A. 2. of the PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System (OS) but no Microsoft OS. Is it a coincidence that Dell quietly stopped offering Linux as an operating system choice on its build-to-order systems in August 2001? If a company of Dell's size can't offer a competing OS, who can (or will)? This would curtail consumer choice, since not everyone has the technical prowess (nor necessarily the time) to install a different operating system. This is especially true of users who, for the first time, are just beginning to use computers and the Internet.

Before acting on the Proposed Final Judgment, I implore you to consider a fair alternative. The settlement sought by State of New York, et al., in Civil Action No. 98-1233 (CKK) also known as "Track II", before the U.S. District Court for the District of Columbia, is a good starting point. The States' proposal is different from the PFJ as a whole, but it contains many elements similar to those of the PFJ, with small yet critical changes.

Very truly yours,

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